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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 276

SERV-AIR, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. i-xiii) is not yet reported. The Board's decision and order (R. 1472-1605)[1] are reported at 161 NLRB 382.

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[1] "R." refers to the printed "Appendix" filed in the court of appeals. The Board's decision and order, including the Trial Examiner's decision, comprise the last 133 pages of Volume III of the three volumes.

JURISDICTION

The opinion and order of the court of appeals were entered on January 19, 1968 (Pet. App. xiii), and a petition for rehearing was denied on April 23, 1968. The petition for a writ of certiorari was filed on July 8, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Board properly found that the employer interfered with rights protected by the National Labor Relations Act (a) by posting a notice warning the employees that a union would not "work to your benefit but to your serious harm"; (b) by restricting employees to the wearing of one union insignia in the plant and discharging them for breaking this restriction; and (c) by soliciting employee signatures on a petition for a Board-supervised representation election.

2. Whether the Board properly found that the Union had, in connection with each of two work-stoppages, made unconditional applications for reinstatement, so that the refusal of the employer to reinstate the strikers violated the Act.

3. Whether substantial evidence supports the Board's finding that the employer, in effecting an economic reduction in work force, discriminatorily selected prominent union leaders for layoff because of their union activities.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*), are set forth in the Appendix, *infra*, p. 20.

STATEMENT

The Board found[2] that petitioner violated Section 8(a)(1) of the Act by posting a notice threatening its employees with adverse consequences in the event of unionization, by unduly restricting employees to the wearing of one union insignia, and by soliciting employee signatures on an election petition. The Board also found that petitioner violated Section 8(a)(3) and (1) of the Act by temporarily refusing to reinstate two groups of striking employees, by discriminatorily selecting eight active union adherents for layoff in its jet engine field maintenance shop, and by temporarily discharging several dozen employees for wearing more than one union insignia. The Board ordered the petitioner to cease and desist from the unfair labor practices found; to make whole the strikers temporarily refused reinstatement for any loss of earnings suffered; to offer to reinstate and to make whole the employees discriminatorily laid off or dis-

[2] We discuss only the unfair labor practice findings now before this Court. The court below refused to enforce the Board's order in certain respects (Pet. App. ii-iv, xii), but the Board has not sought review of those rulings. In addition, petitioner disavows (Pet. 6) any attempt to seek review of certain aspects of the Board's decision sustained by the court below (see Pet. App. xii-xiii).

charged; and to post the customary notice (R. 1565-1570, 1603-1605).

The pertinent facts are as follows.

A. The evidence.

1. *The coercive notice*

Petitioner ("The Company") operates and maintains all facilities and equipment used in the pilot training program at Vance Air Force Base near Enid, Oklahoma and two auxiliary fields in the Enid area whose operations are fully integrated with those of the main base (R. 1475-1476; 771). In November 1960, organizational activity in behalf of the Union [3] began among the Company's employees. In response, the Company posted a notice, at or near its time clocks, which stated, *inter alia* (R. 1404-1408, 1479-1482; 1244):

> TO ALL EMPLOYEES
>
> * * * We have decided to state the Company's position on these subjects as clearly as we can for everybody alike:
>
> (1) This matter is, of course, one of concern to the Company. It is however, also a matter of serious concern to you and our sincere belief is that if this Union were to come into this Plant, it would not work to your benefit but to your serious harm.
>
> (2) It is our positive intention to oppose this Union and by every proper means to prevent it from getting in here.
>
> * * * *

[3] International Association of Machinists.

(6) No person will be allowed to carry on Union organizing activities on the job. Anybody who does so and who thereby neglects his own work or interferes with the ways of others will be subject to discharge.

* * * *

As a result of a Board-supervised election on May 6, 1964, a local of the Union was certified as the bargaining agent for a unit comprising the fire and rescue department (R. 1481-1482; 30-31). Shortly thereafter, and in violation of Section 8(a)(5) and (1) of the Act, the Company unilaterally changed certain terms of employment in the unit (R. 1483-1484; 30-37, 1380-1383; Pet. App. xii-xiii).

2. The strikes and temporary refusals to reinstate

(a) *The base shop employees.* Early in the summer of 1964, organizational activity increased to extend the Union's representation beyond the already certified fire-fighting unit (R. 1483-1484). Although Company supervisors coercively interrogated employees and threatened to discharge union leaders, in violation of Section 8(a)(1) of the Act (R. 1483-1486; 41-44, 169-170, 268-269, 523-525, 529-530; Pet. App. xii), the organizational activity continued.

On September 2 the Company discharged two union adherents for soliciting membership during working hours, in contravention of the no-solicitation rule embodied in the posted notice set forth *supra* (R. 1485-1488, 1493-1500, 1602-1603; 331-340, 543, 549-556, 574-577, 612-613, 683-685). On September 4, twenty-eight of the base shop employees went on strike to protest the discharges (R. 1499-1500; 355, 933,

1391).[4] That evening, however, the strikers authorized Union Representative Christian to make an offer to return to work on September 8, the next working day (R. 1501-1502; 356-357). Christian, on September 4, accordingly sent the Company a telegram which, after reciting the reasons for the walkout, concluded (R. 1501-1502; 1210):

> The Union is respectfully demanding that the Company cease and desist these unfair labor practices and to allow all concerned to return to their jobs without anymore retaliatory measures being taken against them because of their concerted action. An immediate reply as to the Company's intent is requested.

On the morning of September 8 the strikers appeared for work (R. 1501-1502; 357). The Company told them that "due to the rearranging of work schedules, we don't have any work for you" (R. 1501-1502; 358-359, 439). Later that day, Christian sent another telegram objecting to this "lockout," repeating the application for reinstatement of the strikers, asking that their time-cards be in the regular place, and stating that the strikers "will report to work tomorrow" and "desire to work but they want their legal rights respected" (R. 1503-1504; 1213). The Company notified each employee that he could return to work the following day (R. 1503-1504; 1214), and they did so (R. 1503-1504; 365, 441-442).

---

[4] Earlier that day 26 employees in the maintenance shop had also struck, but the Board found they were subsequently returned to work without any infringement of their statutory rights (R. 1485-1488, 1495-1500, 1543-1546, 1549-1550, 1564, 1602; 331-340, 346-348, 928).

(b) *The fire-fighting employees.* Though negotiating with the Union in the certified fire-and-rescue-department-unit, the Company rejected a request to discuss certain grievances. As a result, 57 employees in that unit went on strike on September 14 (R. 1503-1508, 1511-1512; 1234, 1393). On September 15, however, Union Representative Christian sent a telegram to the Company, stating (R. 1509-1510; 1236):

> Be advised that the members of Smoke-Eaters Lodge 898 International Association of Machinists who would be customarily scheduled to work tomorrow Wednesday September 16, 1964 will report to work on their regular job and place and in their usual manner. Be further advised they are interested in returning to their jobs and remaining on their jobs as long as the company doesn't create new instances that would cause another disturbance.

The Company immediately responded by telegram, calling the Union's offer to return to work "conditional" and rejecting the firemen's offer to return to work the following morning (R. 1510; 1238). Christian sent telegrams on September 16 and 17 to the Regional Director of the Board complaining that Air Force personnel were being used as replacements to perform the fire fighting operation and stating that the firemen were "ready, willing and able to return to their jobs unconditionally" (R. 1510-1511; 1239-1240). On September 17, petitioner's president wired the Regional Director and Christian that it was the Company's position that the September 15 offer to

return was not acceptable because it was conditional (R. 1511-1512; 1241).

On September 16, seven of the firemen at one of the auxiliary fields made themselves available for work but were told by the Company that no work was available for them; they returned to their homes (R. 1511-1512; 462-464). At a conference between the parties later that day, in the presence of a Federal mediator, the offer to return to work was discussed and the Company representative again refused to accept the offer in the language of the Union's September 15 telegram (R. 1511-1512; 464-465). Finally, on September 17, language suitable to the Company was agreed upon, and, pursuant to the Company's acceptance of that offer, the firemen returned to work on September 18 (R. 1511-1512; 469-470, 477-478, 486).

3. *The restriction of employees to wearing one union insignia and discharge of employees for noncompliance*

During the height of the organizing campaign, the Union's supporters wore various badges indicating their allegiance.[5] By mid-October multiple-badge-wearing became the custom; the Company itself issued badges which indicated that "No Union [was] wanted", and which were worn by employees opposed to the Union as well as by Company officials (R. 1513, 1514; 121-122, 193, 198-199). In addition, for sev-

[5] Included were pencils bearing union insignia, worn in their pockets; plastic badges worn by shop stewards; improvised badges pasted on plastic buttons; and small signs worn by some employees on their backs (R. 1513-1514; 55-57, 116-118, 193-194).

eral months some of the employees had been wearing name tags attached to their shirts in addition to their union buttons (R. 1513-1514, 117-118, 123-124).

Between October 15 and 20 the Company discharged several employees who refused to remove small pro-union signs attached to their backs (R. 1513-1518; 64-68, 128, 141, 180-182). On October 20 the Company posted a notice which directed that only one button could be worn (R. 1515-1518; 1199). During the following week, more employees were discharged when they then refused to remove all but one union insignia, and in all approximately 50 employees were discharged on this ground (R. 1515-1520; 144-146, 151, 182, 218-221, 223-225, 1199, 1202, 1444). On October 27, however, the employees were reinstated and the Company posted a notice announcing that the single-badge rule was suspended pending determination of its legality by the Board (R. 1519-1520; 145-146, 1202).

4. *Company solicitation of employee signatures to an election petition*

In late October 1964 two men found to have been Company supervisors signed and helped circulate a petition requesting that an election be conducted by the Board, explaining to employees that "we want to get an election; get this thing over with one way or another; we don't want no Union". By early January 1965 signatures had been obtained from approximately half of the Company's civilian employees on the base (R. 1519-1522; 104-105, 108-109, 204-205, 283-288, 426-428, 647-648, 1216-1218, 1220).

5. The selection of eight active union leaders for layoff

The Company's Aircraft Maintenance Program, administered by the Air Force, was altered in 1964, when it was decided that engines could be inspected after every 200 hours of use, rather than after every 100 hours. (R. 1523-1524; 942). After taking normal attrition into account, the Company decided that eight workers would have to be terminated as no longer necessary under the new procedure (R. 1523-1524; 948-950). As part of the plan for selection of candidates for layoff, Shop Superintendent Sprayberry and his assistant, Lolmaugh, used charts for job ratings by which each employee was evaluated numerically on various elements of job performance (R. 1525-1526; 1097-1098).[6] Employees with the lowest aggregate rating would be laid off. (R. 1525-1526; 1060-1061, 1208, 1209). All of the eight employees who were actually terminated in November 1964, had been designated stewards of the Union, had participated actively in the organization drive which began in early September, and had joined in the September walkouts (see *supra*, pp. 5-6). These employees, moreover, were not the eight with the lowest ratings (R. 1532). Additionally, it was stipulated that these employees had never seen the rating charts or been informed of their existence. With few excep-

[6] Provision was made for ratings ranging from poor (1) to outstanding (5) and based on the following objective and subjective categories: Seniority, Production, Job Ability, Initiative, Temperament, Job Attitude, Attitude Toward Supervisor, Acceptance of Rules and Regulations, and Harmony with Co-Workers.

tions, the men had not previously been the subjects of any disciplinary action (R. 1527-1531).

B. The decisions below

In finding the various unfair labor practices specified *supra*, pp. 3-4, the Board rejected the Company's claims that the notice posted at the beginning of the organizational campaign was merely the permissible expression of views (R. 1540); that the strikers did not make unconditional and valid applications for reinstatement (R. 1547, 1550-1551); that the restriction to the wearing of one union insignia and the discharges for breach of that restriction were lawful (R. 1551-1555); that the Company's solicitation of employee signatures to an election petition did not interfere with organizational rights (R. 1555-1557); and that eight active union leaders were selected for layoff solely for nondiscriminatory reasons (R. 1557-1561).

The court of appeals sustained the Board findings and conclusions in these respects and, in relevant part, enforced the Board's order (Pet. App. i-xiii).[7]

ARGUMENT

1. *The notice.* There is no merit to petitioner's claim (Pet. 7-12) that the Board improperly held that the Company violated Section 8(a)(1) of the Act by posting a notice to employees warning that the ad-

[7] While the court concluded that the notice was proper when originally posted in 1960, it agreed with the Board's ultimate finding that, in the context of the Company's activities in 1964, the notice was correctly found to constitute an unlawful threat of reprisal (Pet. App. iv-v).

vent of the Union would "operate to your serious harm" (*supra*, pp. 4-5). Compare *J. P. Stevens & Co.* v. *National Labor Relations Board*, 380 F. 2d 292 (C.A. 2), certiorari denied, 389 U.S. 1005.

Although some other courts have held that similar notices were not coercive (see Pet. 7), there is no true conflict since the results in those cases turn on their facts. In *Amalgamated Clothing Workers* v. *National Labor Relations Board*, 365 F. 2d 898, 910 (C.A. D.C.), where the context consisted only of isolated threats by low level supervisors, interrogation of a single employee by the plant manager, and an improper refusal to recognize the union's card majority, the court pointed out that "[t]he notice may take a different coloration by virtue of the accompanying circumstances." None of the earlier decisions of the Courts of Appeals for the Fourth and Sixth Circuits involved use of the notice in the context of other unfair labor practices as widespread and serious as those committed by the Company here.[8] In the pres-

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[8] *National Labor Relations Board* v. *Kayser-Roth Hosiery Co.*, 388 F. 2d 979 (C.A. 4) (two isolated violations of Section 8(a)(1)); *Wellington Mill Div., West Point Mfg. Co.* v. *National Labor Relations Board*, 330 F. 2d 579, 583-584 (C.A. 4) (court found only one violation of Section 8(a)(1)); *National Labor Relations Board* v. *Threads, Inc.*, 308 F. 2d 1, 8-9 (C.A. 4) (two violations of Section 8(a)(1) and one violation of Section 8(a)(3)); *Surprenant Mfg. Co.* v. *National Labor Relations Board*, 341 F. 2d 756, 758-760 (C.A. 6) (two Section 8(a)(1) violations). Cf. *National Labor Relations Board* v. *Southwire Co.*, 352 F. 2d 346, 347-348 (C.A. 5) (court found that language concerning "serious harm" to employees was wisely changed in later company notices, and concluded that "[u]nder these circumstances" the second notice did not violate the Act).

ent case, however, the import of the notice had to be evaluated in the climate of the Company's unlawful campaign to defeat the exercise of organizational rights—including, *inter alia*, its threats and coercive interrogations, its refusal to reinstate 85 strikers, its temporary discharge of approximately 50 employees who refused to comply with improper restrictions on wearing union insignia, and the discriminatory selection of 8 union leaders for layoff. And it was on this limited ground, *i.e.*, "[i]n the atmosphere existing in 1964," that the court below sustained the Board's finding, while agreeing that in a less hostile milieu the notice might not be coercive (Pet. App. iv).

Finally, we point out, the Fourth Circuit's most recent decision on the issue has squarely affirmed the principle relied on by the court below, although the court concluded that the Section 8(a)(1) violations found were not sufficient to give the notice a coercive import. *National Labor Relatons Board* v. *Greensboro Hosiery Mills, Inc.*, 68 LRRM 2702, 2704, No. 11,909, July 8, 1968.[9] Since these questions turn on an

[9] The Board does not view such notices as illegal *per se*, nor as invalidated simply by the existence of other unfair labor practices; it is only where these practices tend to impart a coercive overtone to the notice that the Board finds it unlawful. *Greensboro Hosiery Mills, Inc.*, 162 NLRB No. 108, 64 LRRM 1164. Contrary to petitioner's assertion (Pet. 8-11), the Board's more recent decision in *Allied/Egry Business Systems Inc.*, 169 NLRB No. 60, 67 LRRM 1195, is not a departure from the principle applied here. There the Board held that statements of the adverse consequences of unionization in a series of pre-election letters to the employes did not contain threats invalidating the election, especially when viewed against, *inter alia*, the nature of the union's campaign literature. Moreover, the case was a representation proceeding in

assessment of the significance of the peculiar facts in individual cases, judicial review is appropriately left to the courts of appeals. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474.

2. *The offers to return to work.* The court below properly affirmed the Board's finding (R. 1547, 1550-1551) that the Union made unconditional and effective applications for reinstatement of the two groups of strikers. Although the communications did express the desire that the Company refrain from any *future* conduct like that which had precipitated the walkout, both applications clearly stated that the strikers wanted to return to work immediately and would do so without capitulation by the Company on the strike issues. This willingness not to insist that the employer yield on the dispute which triggered the actual walkout is the essence of an unconditional application.[10] Moreover, as the court below noted (Pet. App. vi), the Union made unequivocal this unconditional willingness to end the strike by having the members report for work at their regular time; and yet, the Company barred them from working wholly on the unsupported ground that there was no available work (*supra*, pp. 6, 8).[11]

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which no menacing background of unfair labor practice conduct was in issue.

[10] See *Horace G. Prettyman*, 12 NLRB 640, 669-670. See, also, *National Shirt Shops of Florida, Inc.*, 105 NLRB 116, 129-131, enforced in pertinent part, 212 F. 2d 491, 494 (C.A. 5); *Southern Fruit Distributors, Inc.*, 109 NLRB 376, 391; *Hawaii Meat Company*, 139 NLRB 966, 970-971, enforcement denied on unrelated grounds, 321 F. 2d 397 (C.A. 9).

[11] Cf. *Colecraft Mfg. Co.* v. *National Labor Relations Board*, 385 F. 2d 998, 1005 (C.A. 2).

3. *The multiple badges.* The question whether the Company unlawfully restricted employees to wearing one union insignia and discriminatorily discharged employees for violating that restriction is governed by the principle enunciated by this Court in *Republic Aviation Corporation* v. *National Labor Relations Board*, 324 U.S. 793, 802 n. 7, that an employee has the right, free from employer interference, to wear union insignia while at work, and that only under special circumstances may an employer, because of pressing business considerations, limit this right. See *National Labor Relations Board* v. *Lone Star Textiles, Inc.*, 386 F. 2d 535, 536-537 (C.A. 5). Here again, the issue is essentially a factual one, and especially in view of the concurrent findings of the examiner, the Board, and the court below that no such special circumstances existed, further review by this Court is not warranted.

The record amply supports the determination that the Company had failed to establish special circumstances to justify its ban against multiple insignia. Thus, while the Company asserted that this restriction was necessary to maintain harmony and uninterrupted production in the plant, its action in distributing its own buttons and permitting its supervisors to wear "no union wanted" signs belied this claim. Nor was it shown how wearing more than one insignia enhanced the possibility of disruption (R. 1553-1554; 125-127). Equally without record support is the argument that multiple insignia increased the "foreign object" danger to jet engines serviced: all civilian and military personnel wore or were permitted to wear

plastic name tags affixed to their jackets with a pin (R. 1553-1554; 118, 123-124); employees working on jet engines carried pencils, steel rulers without clips, cigarette packs and other items in their shirt pockets (R. 1553-1554, 114-115, 123-124, 805, 856-857); the Company allowed multiple insignia for a month and a half without taking action or informing employees that it created undue safety hazards (R. 1553-1554; 118); the insignia restriction was applied to an employee whose duty was to operate a lawn mower and who had no contact with jet engines; and, the restriction attempted to bar signs taped on employees' backs but did not apply to tags or pencil clips or other items which under the Company's reasoning could have posed at least equal danger (R. 1553-1554; 418-420).

Neither of the two cases relied on by the Company (Pet. 17-22) is in conflict with the holding below. Both cases recognize that under *Republic Aviation* an employer may not ban multiple or unusual insignia unless "special circumstances" make it necessary in order to maintain production or plant discipline, and the circumstances found in those cases are critically distinguishable from the facts of this case. In *Caterpillar Tractors Co.* v. *National Labor Relations Board*, 230 F. 2d 357 (C.A. 7), the employer forbade the employees to wear buttons in the plant carrying the legend "Don't be a scab." The Seventh Circuit concluded the term "Scab" was inherently provocative and could lawfully be banned. Here, on the other hand, the insignia worn and the messages inscribed on employee clothing contained no such "fighting words"; moreover, they were of the same tenor as the anti-

union materials distributed by the Company to be worn by employees and supervisory personnel (*supra* p. 8). And, as the court below explained, the Seventh Circuit had recognized in *Caterpillar Tractor* that "an employer may not restrict 'passive inoffensive advertisement of organizational aims.'" (Pet. App. viii).

The facts in *Fabri-Tek, Inc.* v. *National Labor Relations Board*, 352 F. 2d 577, 586 (C.A. 8), are also distinguishable. There in the court's view, it was reasonable for the employer to regulate the wearing of "out-size" union insignia, and customary insignia when worn in an "extraordinary" way. The court noted that a high degree of concentration by the affected employees was essential for the precision required in producing the magnetic devices for computers, but that wearing oversize union buttons could well distract employees, and that there was "some evidence" of employee distraction when such buttons were worn. Moreover, the court saw this danger as aggravated by the competing of "rival union factions" in the plant. But, as the court of appeals has here observed (Pet. App. viii), the genuine employer concern over "danger to plant processes", found present in *Fabri-Tek*, is entirely absent from this present record.[12]

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[12] No conflict warranting review is created by the lower court's disagreement with *Fabri-Tek* insofar as the Eighth Circuit there stated that the wearing of over-size or multiple insignia is a form of "solicitation" and may be banned during working hours under *Republic Aviation* (Pet. 22, 28). Though the Eighth Circuit so characterized the unusual use of insignia

4. *The election petition.* The Board found that supervisory personnel had signed and sponsored a petition to bring about an immediate test of the Union's strength in a Board-supervised election, and had explained that the Company "want[ed] no union" (*supra*, p. 9). Whether such action resulted in prohibited management pressures on the employees' free exercise of organizational rights, as the Board found and the court below agreed, is purely a question of fact. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U.S. 584, 598. As the court of appeals held (Pet. App. ix-x), in the context of anti-union animus and a variety of other unfair labor practices, the record fully supports the inference that the Company was engaged in an unlawful attempt to force a premature election while the consequences of its hostile campaign would be most effective.

5. *The layoffs.* Petitioner challenges the finding that the Company had applied its new system of job ratings in a way which discriminatorily selected eight union stewards and prominent organizational leaders for discharge. This argument turns solely on factual claims (Pet. 22-27) found unsupported at all stages of the proceedings (R. 1522-1534, 1557-1562, 1600-1601; Pet. App. xi). The assertion of error, there-

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in the circumstances presented, the court's ultimate holding rested on the principles stated above. Thus, the court stated "we further believe, however, that the company rule, as written and enforced, banning the wearing of unusual union insignia or usual union insignia in a unusual way is not in violation of the employees' rights under the Act because of special considerations and circumstances present in this case * * *" (352 F. 2d at 583).

fore, raises only an evidentiary issue which does not call for further review. *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1968.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) are as follows:

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Sec. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * *

(c) The expressing of any views, arguments, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

* * * *

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